

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-209683**DATE:** June 20, 1983**MATTER OF:** Bush-Herrick, Inc.**DIGEST:**

1. When an agency can obtain a needed item faster and more cheaply by building it in-house rather than by awarding a contract, the agency may cancel the solicitation on the ground that cancellation is in the best interests of the Government.
2. Claim for bid preparation costs is denied where cancellation of solicitation was justified.

Bush-Herrick, Inc. (BHI), protests the cancellation of invitation for bids (IFB) No. N0046-82-B-2538 issued by the Naval Supply Center, Puget Sound, Bremerton, Washington (Navy). BHI asserts that the procuring agency acted in an arbitrary and capricious manner in finding BHI nonresponsible and cancelling the solicitation and requests an award of bid preparation costs.

We deny the protest and the request for bid preparation costs.

On June 8, 1982, the Navy issued the IFB for a variable speed electro-hydraulic winch. Four bids were received with BHI, the low bidder, at \$61,320.

Because BHI was a newly formed company, Defense Contract Administration Services performed a preaward survey (PAS) of BHI on August 16. During the PAS, it became apparent that BHI and the contracting agency had different views of how the winch should operate. Although the solicitation required a redundant main-drive system which BHI intended to build, the Navy appears to have wanted a different configuration. Also, the Navy objected to the drive and brake system being on the indirect side of the winch and preferred it on the direct side even though the

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specification did not include such a requirement. Because of these disagreements, the contracting officer held BHI nonresponsible.

The question of responsibility was referred to the Small Business Administration (SBA) for certificate of competency (COC) consideration. A COC was issued. At the same time that SBA issued its COC, about the first week of October, the Naval Undersea Warfare Engineering Station (NUWES) decided to build the winch in-house and canceled the solicitation.

BHI has submitted signed statements asserting that NUWES officials admitted canceling the solicitation in an attempt to deprive BHI of the contract. NUWES has submitted signed statements refuting this allegation and claiming that the cancellation was made because it found that it had enough available manpower to produce the winch in-house, and this would be faster and cheaper. Where there is a factual dispute of this nature, we must decide against the protester for failing to carry the burden of proof and accept the Navy's assertion that it can produce the winch in-house more cheaply and faster and that this decision has not been reached in an attempt to thwart the competitive bid process. Essex Electro Engineers, Inc., B-206012.3, October 4, 1982, 82-2 CPD 307. When the Government can in fact build an item faster and more cheaply in-house than through awarding a contract, cancellation is in the best interests of the Government. C. Joe Fuller, B-186479, October 20, 1976, 76-2 CPD 349; Universal Analytics, Inc., B-200938, July 7, 1981, 81-2 CPD 11. Cancellation is justified even after bid opening when cancellation is in the best interests of the Government. Defense Acquisition Regulation § 2-404.1(b)(viii) (1976 ed.); C. Joe Fuller, supra. Since cancellation of the solicitation was justified, it is not necessary to consider the propriety of the nonresponsibility determination.

Therefore, protest denied.

We also deny BHI's claim for bid preparation costs because the agency did not act arbitrarily in cancelling the solicitations.

for *Milton J. Fowler*
Comptroller General
of the United States